IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

ANDREA CHEN, a Washington resident, Appellant, v. STATE FARM BANK, a Wisconsin company, Respondent.	)	No. 63218-3-I DIVISION ONE UNPUBLISHED OPINION FILED: June 7, 2010

Spearman, J.–Andrea Chen signed a promissory note and security agreement in favor of State Farm Bank (SFB) after borrowing $53,000 to purchase a car. Chen claimed that SFB subsequently modified the promissory note to release her from the obligation to repay the loan. But Chen failed to submit any evidence to support this allegation. Nor did she offer any evidence to support her claims for fraud, Consumer Protection Act violations, and intentional infliction of emotional distress. Accordingly, the trial court properly dismissed all of Chen's causes of action on summary judgment and entered judgment in favor of SFB for the unpaid loan amount. We affirm.

FACTS

In 1999, Andrea Chen began working as an account executive for Safety-Touch & Javithon, Inc., a Woodinville business owned by Huy Chen, Andrea's

father. Chen's mother and brother also worked in the business. In May 2002, Safety-Touch decided to purchase a new BMW M3 coupe for Chen. To fund the purchase, Chen executed a promissory note and security agreement in favor of State Farm Bank (SFB) for $53,000 plus interest. Chen signed the note on behalf of Safety-Touch and separately "as an individual." Chen also signed a power of attorney authorizing SFB "to transfer ownership, apply for Certificate of Title or Duplicate Certificate of Title, and to perform other duties which may be required in connection with the perfection of a security interest, sale, transfer and/or purchase" of the secured vehicle.

Shortly after the car was purchased in Canada, Chen drove it to Washington and obtained a certificate of title listing herself as both the legal and registered owner. She did not send a copy of the title to SFB. In January 2004, SFB repossessed the car after Chen and Safety-Touch defaulted on the monthly payments. SFB returned the car several days later after Chen made additional payments. In February 2004, exercising its power of attorney on behalf of Chen, SFB obtained a corrected certificate of title from the Washington State Department of Licensing, designating Chen as the registered owner of the BMW and SFB as the legal owner.

Chen and Safety-Touch eventually defaulted on the loan. On May 5, 2008, after Safety-Touch declared bankruptcy, the bankruptcy court granted SFB's motion to lift the automatic stay and directed Safety-Touch to surrender the BMW to SFB within five days. Safety-Touch did not comply with the bankruptcy court order.

On May 6, 2008, Chen filed this action for damages against SFB, alleging fraud, Consumer Protection Act violations, and "extreme mental anguish, emotional distress and humiliation and inconvenience." SFB filed counterclaims for breach of contract and unjust enrichment.

Both sides moved for summary judgment. The trial court denied Chen's motion and granted SFB's motion, dismissing all of Chen's claims. The court entered a judgment in favor of SFB for $23,590.35, and directed Chen to surrender the BMW. To date, the BMW apparently remains parked at her aunt's house in British Columbia. The court subsequently awarded SFB attorney fees and costs in the amount of $27,264.06.

DECISION

Standard of Review

When reviewing a grant of summary judgment, an appellate court undertakes the same inquiry as the trial court.[1] We consider the evidence and the reasonable inferences therefrom in the light most favorable to the nonmoving party.[2] Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."[3]

Here, SFB met its initial burden on summary judgment by pointing out the absence of evidence to support Chen's alleged causes of actions.[4] The burden

[1] Wilson v. Steinbach, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982).
[2] Schaaf v. Highfield, 127 Wn.2d 17, 21, 896 P.2d 665 (1995).
[3] CR 56(c); White v. State, 131 Wn.2d 1, 9, 929 P.2d 396 (1997).

then shifted to Chen to set forth specific facts demonstrating a genuine issue for trial.[5] "'[A] complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial.'"[6]

During her deposition, Chen could not recall why she signed the promissory note in her individual capacity. But she does not dispute that she was liable for the entire loan amount under the terms of that note. Chen maintains, however, that shortly after the car was purchased, Safety-Touch and SFB modified the terms of the note to relieve her of any financial obligations and to convert the loan to an unsecured loan. Chen claims that after the modification, Safety-Touch sold her the BMW, thereby creating a "clean title."

The promissory note that Chen signed required that any changes be in writing. She failed to submit any evidence documenting a modification of the terms of the note and acknowledged that she was not personally involved in the alleged modification. Chen's reliance on her father's affidavit and what appears to be the original car loan application is misplaced. Huy Chen's declaration states only that he talked to a SFB agent about changing the secured obligation to an unsecured obligation. He does not allege that SFB agreed to such a change. The loan application indicates Chen originally requested that Safety-Touch be the borrower. But no evidence suggests that SFB agreed to this request. Moreover, the loan application is not the parties' contract, and Chen eventually signed the promissory note, unambiguously agreeing to personal

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[4] See Young v. Key Pharms., Inc., 112 Wn.2d 216, 225 n.1, 770 P.2d 182 (1989).

[5] See Kendall v. Public Hosp. Dist. No. 6, 118 Wn.2d 1, 9, 820 P.2d 497 (1991).

[6] Young v. Key Pharms., 112 Wn.2d at 225 (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 322-23, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)).

liability on the obligation.

Under the circumstances, Chen failed to demonstrate any material factual issue suggesting that the parties modified the original loan agreement by transforming a secured obligation into an unsecured obligation or by releasing Chen from her obligation to repay the loan. The trial court therefore properly granted SFB's motion for summary judgment on its breach of contract claim and entered judgment for the unpaid loan amount in SFB's favor.

The trial court also properly dismissed Chen's causes of action on summary judgment.

Fraud

Chen's fraud claim is based on allegations that SFB improperly requested a corrected certificate of title listing SFB as the legal owner of the BMW. She asserts that SFB forged her signature on the vehicle title application and fraudulently represented to the Department of Licensing that the title was "lost."

Contrary to Chen's allegations, SFB did not forge her signature on the title application. Rather, the application was signed "Andrea Chen by Dan Hinkle for SF Bank POA." This signature was in accordance with the power of attorney that Chen signed, authorizing SFB to apply for a certificate of title. Nor has Chen identified any evidence in the record suggesting that SFB's representation of a "lost" title was knowingly false.

Moreover, even if some aspect of SFB's application for a corrected title was improper, Chen has failed to address the remaining elements of fraud. To maintain her claim of fraud, Chen must demonstrate: (1) SFB represented an

existing fact; (2) the fact was material; (3) the fact was false; (4) SFB knew it was false; (5) SFB intended that Chen would act on the fact; (6) Chen was ignorant of the fact's falsity; (7) Chen relied on the truth of SFB's representation; (8) Chen had a right to rely on the representation; and (9) damages.[7] Even when viewed in the light most favorable to Chen, the evidence does not support an inference that she relied on a knowingly false statement or that her reliance resulted in some injury. The trial court properly dismissed Chen's fraud claim.[8]

Consumer Protection Act

Chen also claims that SFB's actions violated the Consumer Protection Act, chapter 19.86 RCW. To establish a violation of the CPA, a private plaintiff must prove five elements: (1) an unfair or deceptive act or practice, (2) the act or practice occurred in the conduct of trade or commerce, (3) the act or practice impacted the public interest, (4) an injury to the plaintiff's business or property, and (5) a causal link between the unfair or deceptive act or practice and the injury.[9]

Chen's CPA claim apparently rests on SFB's application for a corrected certificate of title and brief repossession of the BMW in 2004 after Safety-Touch and Chen defaulted on the payments. An act is deceptive for purposes of the CPA if it has "the capacity to deceive a substantial portion of the public."[10] Chen

[7] Stiley v. Block, 130 Wn.2d 486, 504, 925 P.2d 194 (1996).

[8] For the first time on appeal, Chen alleges the power of attorney was invalid. Because she fails to support this contention with any legal argument or citation to relevant authority, we decline to consider it. See Saunders v. Lloyd's of London, 113 Wn.2d 330, 345, 779 P.2d 249 (1989).

[9] Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co., 105 Wn.2d 778, 784-93, 719 P.2d 531 (1986)

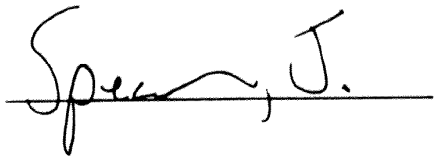
[10] Hangman Ridge, 105 Wn.2d at 785.

has not identified any evidence in the record tending to show that SFB's actions were unfair or deceptive.[11] Nor has she addressed or demonstrated a material factual issue as to any of the remaining elements of a CPA violation. The trial court properly dismissed her CPA claim.

Intentional Infliction of Emotional Distress

Finally, Chen alleges that SFB is liable for intentional infliction of emotional distress because it repossessed her car for several days in 2004. To maintain this cause of action, which is identical to the tort of outrage, Chen had to prove extreme and outrageous conduct, intentional or reckless infliction of emotional distress, and severe emotional distress.[12] But she failed to identify any conduct by SFB that approached the standard needed to support a claim of intentional infliction of emotional distress. Nor did she offer any evidence that she suffered severe emotional distress as a result of SFB's conduct.[13] The trial court properly dismissed this cause of action.[14]

Affirmed.



WE CONCUR:

[11] Columbia Physical Therapy, Inc., P.S. v. Benton Franklin Orthopedic Associates, P.L.L.C., 168 Wn.2d 421, 443, 228 P.3d 1260 (2010).

[12] Kloepfel v. Bokor, 149 Wn.2d 192, 195, 66 P.3d 630 (2003).

[13] Kloepfel, 149 Wn.2d at 199.

[14] Because Chen failed to establish a prima facie case supporting any of her causes of action, we need not discuss SFB's contentions that they are barred by the statute of limitations.

Leach, A.C.J.

Grosse, J